

Message Text

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E.O. 11652: GDS
TAGS: ENRG, VE
SUBJECT: OIL COMPANY PROBLEMS: PROGRESS ON BACK TAX AND
COMPTROLLER'S CLAIMS

REF: CARACAS 208

1. SUMMARY. THE MINISTRY OF FINANCE IS INITIATING WEEKLY MEETINGS WITH EXXON TO REIVIEW THE OUTSTANDING BACK TAX CLAIMS. EXXON LOCAL REPRESENTATIVE BELIEVES MINISTRY OFFICIALS ARE SINCERE IN THEIR DESIRE FOR AN EARLY SETTLEMENT BUT IS CONCERNED THAT A CASE BY CASE REVIEW MAY BOG DOWN. HE IS RENEWING ATTEMPTS TO OBTAIN THE RELEASE OF A PORTION OF GUARANTEE FUND. FINANCE MINISTER ADVISED AMBASSADOR OF PROGRESS TO DATE ON BACK TAXES AND ALSO TOLD HIM THAT EXECUTIVE IS PUSHING SETTLEMENT OF COMPTROLLER'S CLAIMS AND THAT ATTORNEY GENERAL WILL PRESENT EXECUTIVE'S OPPOSITION TO CLAIM IN SUPREME COURT. MINISTER ALSO EXPRESSED SERIOUS CONCERN OVER DETERIORATION OF VENEZUELAN OIL SALES TO US.

END SUMMARY.

PARAGRAPHS 2 THROUGH 5 CONTAIN PROPRIETARY INFORMATION AND SHOULD NOT BE DISCUSSED OUTSIDE OF THE USG.

2. EXXON SERVICES PRESIDENT MARTIN KING MET WITH TOP OFFICIALS
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OF THE MINISTRY OF FINANCE JANUARY 24 AT THEIR REQUEST TO REVIEW THE STATUS OF THE BACK TAX CLAIMS AGAINST EXXON'S FORMER VENEZUELAN COMPANY. IN DESCRIBING THE MEETING TO THE EMBASSY, HE SAID THE MINISTRY OFFICIALS DISPLAYED A VERY POSITIVE ATTITUDE AND APPEARED SINCERELY INTERESTED IN REACHING AN EARLY SETTLEMENT OF THESE CLAIMS. IT WAS AGREED THAT THERE WOULD BE WEEKLY HALF DAY MEETINGS AT THE TECHNICAL LEVEL BETWEEN EXXON AND THE SPECIAL

COMMISSION TO GO OVER EACH OF THE CLAIMS, AND A MONTHLY MEETING WITH THE MINISTER OR VICE MINISTER TO REVIEW PROGRESS. THE FIRST OF THESE MEETINGS COULD BE HELD WITHIN A WEEK.

3. WHILE REPEATING THAT HE CONSIDERED THIS A VERY POSITIVE, GOOD START, KING SAID HE WAS DISAPPOINTED THAT THE GOV WAS APPARENTLY UNWILLING TO STRIKE A BROAD, QUICK BARGAIN ON A GENERAL SETTLEMENT, BUT RATHER INSISTED ON A CLAIM BY CLAIM REVIEW. AS AN EXAMPLE OF THE TYPE OF BROAD SETTLEMENT EXXON WOULD ACCEPT, HE SUGGESTED THE REDUCTION OF ALL FINES TO A NOMINAL FIVE PERCENT, AND PAYMENT OF A MAXIMUM OF 25 PERCENT OF THE FACE VALUE OF THE ACTUAL CLAIMS. HE SAID THIS WAS JUSTIFIED SINCE EXXON WOULD PROBABLY WIN MOST CASES IN COURT AND BECAUSE THERE WAS NO SUGGESTION OF FRAUD OR COVER-UP IN EXXON'S CLAIMS. HE SAID THAT WHILE HE WELL UNDERSTOOD THE GOV'S DESIRE TO REVIEW EACH CLAIM SEPARATELY SO AS TO CREATE A RECORD WHICH WOULD STAND PUBLIC SCRUTINY, HE WAS CONCERNED THAT THIS PROCESS COULD BECOME BOGGED DOWN IN TEDIOUS NEGOTIATIONS AND THUS DRAG INTO THE ELECTION CAMPAIGN. NOT KNOWING BEFOREHAND THE GENERAL FORM OF THE FINAL SETTLEMENT, HE SAID, WOULD MAKE IT DIFFICULT FOR EXXON TO KNOW HOW FAR IT COULD GIVE ON INDIVIDUAL CLAIMS.

4. KING ALSO SAID THAT HE HAS NOW RENEWED HIS EFFORTS TO OBTAIN THE RELEASE OF 80 PERCENT OF THE REMAINING GUARANTEE FUND ONCE THE ASSET CLAIMS HAVE BEEN DEDUCTED. HE SAID MINISTER HERNANDEZ HAD AGREED TO THIS AT THE TIME OF NATIONALIZATION AND HAS NOW

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AGREED TO TRY TO CONVINCE THE MINISTRY OF FINANCE THAT THESE FUNDS NEED NOT BE HELD TO COVER THE OUTSTANDING BACK TAX OF COMPTROLLER'S CLAIMS. KING POINTED OUT THAT LEGALLY THE BACK TAX CLAIMS ARE ALREADY COVERED BY GUARANTEES OR BONDS. WHILE ADMITTING THAT THESE ARE USUALLY IN THE FORM OF CROSS GUARANTEES BETWEEN THE VARIOUS VENEZUELAN SUBSIDIARIES OF THE COMPANIES, AND THEREFORE ARE OF DUBIOUS REAL VALUE, THE MAINTAINS THAT SINCE THEY WERE ACCEPTED AS ADEQUATE BY THE FINANCE MINISTRY WHEN PRESENTED, THEY SHOULD NOT BE CHALLENGED NOW. AS TO THE COMPTROLLER'S CLAIM, HE ARGUES THAT SINCE THE COURTS HAVE ACCEPTED THIS CASE UNDER A PROVISION WHICH DOES NOT REQUIRE THE POSTING OF A BOND, THE GOV HAS NO NEED TO HOLD THE GUARANTEE FUND TO COVER THESE CLAIMS.

5. COMMENT: KING IS CLEARLY PLEASED WITH RECENT DEVELOPMENTS ON THIS ISSUE. HE COMMENTED THAT UNTIL A FEW WEEKS AGO, HE EXPECTED THERE WOULD BE NO PROGRESS ON THIS ISSUE UNTIL AFTER THE ELECTIONS IN DECEMBER 1978. HIS SUGGESTED BROAD SOLUTION, 25 PERCENT OF THE FACE VALUE OF THE CLAIMS AND ONLY A NOMINAL FINE, MUST BE CONSIDERED AN OPENING POSITION, SINCE IT APPEARS TO BE CONSIDERABLY MORE FAVORABLE TO THE COMPANIES THAN SIMILAR GENERAL SETTLEMENTS IN THE PAST AND IS PROBABLY UNACCEPTABLE

TO THE GOV IN AN ELECTION YEAR. HIS REMARK THAT EXXON WOULD PROBABLY WIN MOST OF ITS CASES IN COURT CONTRASTS WITH THE OFT-REPEATED STATEMENT BY THE COMPANIES THAT AN OIL COMPANY HAS NEVER WON A SIGNIFICANT TAX CASE IN A VENEZUELAN COURT. IN OUR VIEW, EXXON'S MAJOR OBJECTIVE AT THIS POINT PROBABLY IS THE RELEASE OF THE REMAINING GUARANTEE FUND. WE ESTIMATE 80 PERCENT OF EXXON'S FUND AFTER THE ASSET DEDUCTIONS ARE MADE WILL AMOUNT TO \$130 MILLION. END COMMENT.

6. ON JANUARY 25, THE MINISTER OF FINANCE SUMMONED THE AMBASSADOR TO HIS OFFICE TO SAY HE WANTED THE AMBASSADOR TO KNOW THAT THE GOV WAS GOING TO MOVE RAPIDLY ON THE BACK TAX CLAIMS. HE SAID THAT THE PREVIOUS DAY (JAN. 24) THE MINISTRY OPENED DISCUSSIONS WITH EXXON AND THAT THEY WOULD BE DOING CONFIDENTIAL

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THE SAME WITH EACH OF THE COMPANIES. HE DID NOT KNOW HOW LONG THE PROCESS WOULD TAKE, BUT THE GOV WOULD MOVE TO A SETTLEMENT OF THESE CLAIMS AS RAPIDLY AS POSSIBLE. THE AMBASSADOR URGED THE MINISTER TO MOVE QUICKLY, PARTICULARLY TO AVOID THE PROBLEM BEING DRAGGED OUT INTO THE CAMPAIGN PERIOD.

7. AS TO THE COMPTROLLER CLAIMS, THE MINISTER SAID THAT WHILE THE EXECUTIVE WAS LIMITED IN WHAT IT COULD DO VIS-V-VIS THE JUDICIAL BRANCH, IT WAS TRYING TO SPEED A DECISION IN THE TAX COURT: THE CASE WOULD THEN GO TO THE SUPREME COURT REGARDLESS OF THE DECISION, AND WHEN THAT HAPPENS, THE ATTORNEY GENERAL WILL PRESENT THE EXECUTIVE'S CASE IN OPPOSITION TO THE COMPTROLLER'S CLAIMS. THE MINISTER SAID HE REALLY DID NOT THINK WE NEED WORRY ABOUT THE COURT DECISION (SEE REFTEL AND CARACAS 492).

8. THE MINISTER REPEATED THAT HE WANTED THE AMBASSADOR TO BE AWARE OF THESE DEVELOPMENTS AND TO ASSURE HIM THAT THE GOV WOULD PUSH THESE MATTERS. THE AMBASSADOR EXPRESSED APPRECIATION FOR BEING KEPT INFORMED, REITERATED HIS HOPE THAT THE MATTERS WOULD BE EXPEDITED AND SAID HE WOULD INFORM WASHINGTON.

9. THE MINISTER THEN ASKED HOW THE US WINTER WOULD AFFECT US OIL IMPORTS. THE AMBASSADOR POINTED OUT THAT STOCKS WERE HIGH, AND THAT HE DOUBTED THAT IMPORT LEVELS WOULD BE INCREASED BY THE CURRENT COLD. HE NOTED THAT THE MARKET WAS SOFT AND THAT VENEZUELAN FUEL OIL WAS REPORTEDLY PRICED OVER THE SPOT MARKET RATE.

10. COMMENT. THE MINISTER REFLECTED THE GOV'S GROWING CONCERN OVER THE OFFTAKE SITUATION, WHICH IS OBVIOUSLY SEEN AS VERY SERIOUS BY THEM. HE DID NOT LINK THIS PROBLEM WITH THE CLAIMS QUESTIONS, BUT THE JUXTAPOSITION WAS INTERESTING. SEE ALSO CARACAS 845. END COMMENT

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